

1                                   **DOMESTIC VIOLENCE IN PRESENCE OF**  
2                                   **CHILD AMENDMENTS**

3                                   2002 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Sponsor: David H. Steele**

6   **This act modifies the Utah Criminal Code. The act provides that a person is guilty of child**  
7   **abuse if the person commits an act of domestic violence in the presence of a child. The act**  
8   **eliminates the requirement that there be one or more prior occasions of acts of domestic**  
9   **violence in the presence of a child before a person is guilty of child abuse. The act clarifies**  
10 **that a charge of child abuse arising from domestic violence in the presence of a child is**  
11 **separate and distinct from a charge of domestic violence where the victim is the cohabitant.**  
12 **The act adds domestic violence in the presence of a child to the list of acts constituting**  
13 **domestic violence. The act makes technical changes.**

14 This act affects sections of Utah Code Annotated 1953 as follows:

15 AMENDS:

16           **76-5-109.1**, as last amended by Chapter 81, Laws of Utah 1998

17           **77-36-1**, as last amended by Chapter 229, Laws of Utah 1999

18 *Be it enacted by the Legislature of the state of Utah:*

19           Section 1. Section **76-5-109.1** is amended to read:

20           **76-5-109.1. Commission of domestic violence in the presence of a child.**

21           (1) As used in this section:

22           (a) "Cohabitant" has the same meaning as defined in Section 30-6-1.

23           ~~(a)~~ (b) "Domestic violence" ~~means~~ has the same meaning as ~~[that term is defined]~~ in

24 Section 77-36-1.

25           ~~(b)~~ (c) "In the presence of a child" means:

26           (i) in the physical presence of a child; or

27           (ii) having knowledge that a child is present and may see or hear an act of domestic



28 violence.

29 (2) A person is guilty of child abuse if ~~he~~ the person:

30 (a) commits or attempts to commit criminal homicide, as defined in Section 76-5-201,  
31 against a cohabitant in the presence of a child; or

32 (b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon,  
33 as defined in Section 76-1-601, or other means or force likely to produce death or serious bodily  
34 injury against a cohabitant, in the presence of a child; or

35 (c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits  
36 an act of domestic violence in the presence of a child ~~[after having committed:].~~

37 ~~[(i) a violation of Subsection (2)(a) or (b) on one or more prior occasions; or]~~

38 ~~[(ii) an act of domestic violence in the presence of a child, not amounting to a violation  
39 of Subsection (2)(a) or (b), on one or more prior occasions.]~~

40 (3) (a) A person who violates Subsection (2)(a) or (b) is guilty of a third degree felony.

41 (b) A person who violates Subsection (2)(c) is guilty of a class ~~A~~ B misdemeanor.

42 (4) A charge under this section is separate and distinct from, and is in addition to, a charge  
43 of domestic violence where the victim is the cohabitant. Either or both charges may be filed by  
44 the prosecutor.

45 Section 2. Section **77-36-1** is amended to read:

46 **77-36-1. Definitions.**

47 As used in this chapter:

48 (1) "Cohabitant" has the same meaning as in Section 30-6-1.

49 (2) "Domestic violence" means any criminal offense involving violence or physical harm  
50 or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a  
51 criminal offense involving violence or physical harm, when committed by one cohabitant against  
52 another. "Domestic violence" also means commission or attempt to commit, any of the following  
53 offenses by one cohabitant against another:

54 (a) aggravated assault, as described in Section 76-5-103;

55 (b) assault, as described in Section 76-5-102;

56 (c) criminal homicide, as described in Section 76-5-201;

57 (d) harassment, as described in Section 76-5-106;

58 (e) telephone harassment, as described in Section 76-9-201;

- 59 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections 76-5-301,
- 60 76-5-301.1, and 76-5-302;
- 61 (g) mayhem, as described in Section 76-5-105;
- 62 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Title 76, Chapter 5a;
- 63 (i) stalking, as described in Section 76-5-106.5;
- 64 (j) unlawful detention, as described in Section 76-5-304;
- 65 (k) violation of a protective order or ex parte protective order, as described in Section
- 66 76-5-108;
- 67 (l) any offense against property described in Title 76, Chapter 6, Part 1, 2, or 3;
- 68 (m) possession of a deadly weapon with intent to assault, as described in Section
- 69 76-10-507;
- 70 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person,
- 71 building, or vehicle, as described in Section 76-10-508; [~~or~~]
- 72 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly
- 73 conduct is the result of a plea agreement in which the defendant was originally charged with any
- 74 of the domestic violence offenses otherwise described in this Subsection (2). Conviction of
- 75 disorderly conduct as a domestic violence offense, in the manner described in this Subsection
- 76 (2)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Section 921,
- 77 and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Section 921 et seq.; or
- 78 (p) child abuse as described in Section 76-5-109.1.
- 79 (3) "Victim" means a cohabitant who has been subjected to domestic violence.

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**Legislative Review Note**  
**as of 1-23-02 12:31 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**